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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

93-54

In re  
LISTENERS' GUILD, INC.,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,  
Appellee,

GAF BROADCASTING COMPANY, INC.,  
Intervenor.

Case No. 92-1270

In re  
LISTENERS' GUILD, INC.,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,  
Appellee,

GAF BROADCASTING COMPANY, INC.,  
Intervenor.

Consolidated Case Nos. 93-1618  
93-1687

In re  
GAF BROADCASTING COMPANY, INC.,

For Renewal of License of Station WAXQ(FM),  
Formerly WNCN(FM), New York, NY

File No. BRH-910201WL

MM Docket No. 93-54

To: The Commission

**SUPPLEMENT TO JOINT REQUEST FOR APPROVAL  
OF AGREEMENT FOR DISMISSAL OF  
COURT APPEALS AND PLEADINGS BEFORE THE COMMISSION**

GAF Broadcasting Company, Inc. ("GAF"), the licensee of WAXQ(FM) (formerly  
WNCN), New York, New York, on behalf of itself and the Listeners' Guild, Inc. (the

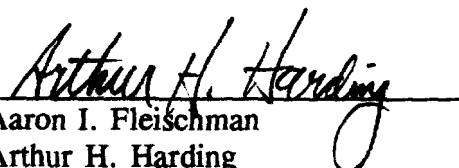
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"Guild"), hereby supplements their March 29, 1994 Request For Approval of Agreement For Dismissal of Court Appeals And Pleadings Before the Commission. That Request included photocopies of the parties' declarations, the signature pages of their Settlement Agreement, and counsel for the Guild's signature page to the pleading. The originals of those declarations and signature pages are attached hereto.

Respectfully submitted,

GAF BROADCASTING COMPANY,  
INC.

  
Aaron I. Fleischman  
Arthur H. Harding  
Christopher G. Wood

Its Attorneys

Fleischman and Walsh  
1400 Sixteenth St., N.W.  
Suite 600  
Washington, D.C. 20036

DATED: April 6, 1994

WHEREFORE, In light of the foregoing, GAF and the Guild respectfully request that the Commission (1) approve this Settlement Agreement; (2) dismiss all pending appeals, comments and other pleadings filed by the Guild with respect to WAXQ now pending before the Commission or its EEO Branch; and (3) grant final approval to the renewal of WAXQ.

Respectfully submitted,

LISTENERS' GUILD, INC.



David M. Rice

Its Attorney

One Old Country Road  
Suite 410  
Carle Place, NY 11514

GAF BROADCASTING COMPANY,  
INC.

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Aaron I. Fleischman  
Arthur H. Harding  
Christopher G. Wood

Its Attorneys

Fleischman and Walsh  
1400 Sixteenth St., N.W.  
Suite 600  
Washington, D.C. 20036

DATED: March 29, 1994

## **ATTACHMENT A**

### **DECLARATION**

LEIGH N. HARRIS, under penalty of the laws of perjury, hereby declares as follows:

I am the Chairman of Listeners' Guild, Inc. ("Guild"), a not-for-profit corporation which has petitioned the Commission to deny applications for the transfer of control of GAF Broadcasting Company, Inc. ("GAF") and for the renewal of GAF's license for radio station WAXQ (FM), formerly WNCN (FM), New York, New York, and which has filed court appeals in both of said matters. Those appeals are now pending before the United States Court of Appeals for the District of Columbia Circuit, and aspects of GAF's renewal application are presently pending before the Commission.

The Guild has determined that it is in the interest of all the parties, as well as of the Court and the Commission, to resolve all of the pending proceedings in accordance with the Guild's written agreement with GAF ("Agreement"), which expresses the entire understanding between GAF and the Guild. As provided in the Agreement, the amount of consideration to be received by the Guild for dismissal of its court appeals and related pending petitions and objections is \$ 110,000. That is far less than half of the Guild's legitimate and prudent expenses of preparing, filing, and prosecuting said petitions and court appeals over a period of six years, as more fully set forth in the accompanying Declaration of the Guild's attorney, David M. Rice, Esq. No other

consideration has been paid or promised to the Guild or to any officer,  
director or principal thereof.

A handwritten signature in black ink, appearing to read "Leigh N. Harris", written over a horizontal line.

Leigh N. Harris  
Chairman,  
Listeners' Guild, Inc.

March 28, 1994

*Oppositions to said Petition for Intervention and Motion to Enlarge Issues* and preparation and filing of consolidated *Replies* thereto; preparation of various procedural motions and requests in said comparative hearing proceeding; review of decision of Administrative Law Judge ("ALJ") on the Guild's *Petition for Intervention and Motion to Enlarge Issues* and preparation and filing of an *Appeal* therefrom before the Review Board; review of GAF's *Opposition* and MMB's *Comments* on said *Appeal*; review of decision of Review Board denying *Appeal*; preparation and filing of an *Application for Review* of such denial; review of the ALJ's decision renewing GAF's license and preparation of a *Notice of Appeal* and an *Appeal* therefrom to the Review Board; review of decision of Review Board denying *Appeal*; preparation and filing of an *Application for Review* of such denial; review of EEO Branch inquiry to GAF and of GAF's *Response* to same; preparation and filing of *Comments* on GAF's *Response*; participation at various times in extensive discussions regarding settlement, ultimately culminating in the present settlement.

A handwritten signature in cursive script, reading "David M. Rice". The signature is written in dark ink and is positioned above a horizontal line.

David M. Rice

March 28, 1994

## **DECLARATION**

I, Allan Dinkoff, hereby declare and state as follows under penalty of perjury:

I am Vice President - Litigation of GAF Broadcasting Company, Inc. ("GAF"), the licensee of WAXQ(FM), formerly WNCN(FM), New York, New York.

GAF has entered into a Settlement Agreement dated March 28, 1994 with the Listeners' Guild, Inc. ("Guild"), concerning appeals now pending before the U.S. Court of Appeals For the District of Columbia Circuit and pleadings and appeals filed by the Guild at the Federal Communications Commission.

Neither GAF, nor its parent companies, nor any principal thereof has promised or paid any consideration to the Guild, its officers, or its members, other than as described in the Settlement Agreement, for the dismissal of the Guild's appeals and pleadings. Based on the declarations of the Guild's Chairman and attorney, GAF understands that the agreed upon consideration represents an amount equal to or less than the Guild's reasonable and prudent expenses in preparing and prosecuting the pleadings and appeal which are encompassed by the Settlement Agreement.



Allan Dinkoff

Vice President - Litigation

GAF Broadcasting Company, Inc.

Dated: March 28, 1994

21. **Counterpart Signatures:** This Agreement may be signed in one or more counterparts, each of which shall be deemed a duplicate original, binding on the parties hereto notwithstanding that the parties are not signatory to the original or the same counterpart. This Agreement shall be deemed executed as of the date on which the executed counterparts are exchanged by the parties.

LISTENERS' GUILD, INC.

By



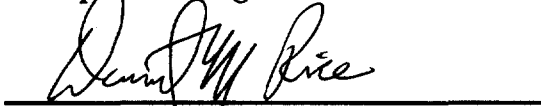
Leigh N. Harris  
Chairman

GAF BROADCASTING COMPANY, INC.

By

\_\_\_\_\_  
Allan Dinkoff,  
Vice President-Litigation

Accepted and agreed:

  
\_\_\_\_\_  
David M. Rice



21. **Counterpart Signatures:** This Agreement may be signed in one or more counterparts, each of which shall be deemed a duplicate original, binding on the parties hereto notwithstanding that the parties are not signatory to the original or the same counterpart. This Agreement shall be deemed executed as of the date on which the executed counterparts are exchanged by the parties.

LISTENERS' GUILD, INC.

By

\_\_\_\_\_  
Leigh N. Harris  
Chairman

GAF BROADCASTING COMPANY, INC.

By

\_\_\_\_\_  
~~Allan Dinkoff,~~  
~~Vice President-Litigation~~

Accepted and agreed:

\_\_\_\_\_  
David M. Rice

**CERTIFICATE OF SERVICE**

I, Eve J. Lehman, a secretary at the law firm Fleischman and Walsh, hereby certify that I have this 6th day of April, 1994 placed a copy of the foregoing "Supplement To Joint Request For Approval Of Agreement For Dismissal Of Court Appeals And Pleadings Before The Commission" in U.S. First Class Mail, addressed to the following:

\*John I. Riffer, Esq.  
Associate General Counsel --  
Adjudication  
Federal Communications Commission  
1919 M Street, N.W., Room 610  
Washington, D.C. 20554

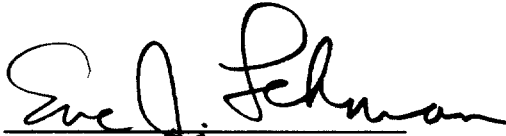
David Honig, Esq.  
1800 NW 187th Street  
Miami, FL 33056

\*C. Grey Pash, Esq.  
Office of General Counsel  
Federal Communications Commission  
1919 M Street, N.W., Room 602  
Washington, D.C. 20554

\*Gary Schonman, Esq.  
Hearing Branch  
Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 7212  
Washington, D.C. 20554

\*Glenn A. Wolfe, Esq.  
Chief, EEO Branch  
Mass Media Bureau  
Federal Communications  
Commission  
2025 M Street, N.W., Room 7218  
Washington, D.C. 20554

\*Lewis Pulley, Esq.  
EEO Branch  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 7218  
Washington, D.C. 20554

  
Eve J. Lehman

\* By hand